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INDUSTRY PERSPECTIVES ON THE
CONSUMER PRODUCT SAFETY COMMISSION
WEDNESDAY, FEBRUARY 10, 2016
House of Representatives,
Subcommittee on Commerce, Manufacturing,
and Trade,
Committee on Energy and Commerce,
Washington, D.C.

The subcommittee met, pursuant to call, at 10:15 a.m., in Room 2322 Rayburn House Office Building, Hon. Michael Burgess [chairman of the subcommittee] presiding.

Members present: Representatives Burgess, Lance, Blackburn, Harper, Guthrie, Olson, Pompeo, Kinzinger, Bilirakis, Brooks, Schakowsky, Clarke, Kennedy, Welch, and Pallone (ex officio).

Staff present: Rebecca Card, Assistant Press Secretary;

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James Decker, Policy Coordinator, Commerce, Manufacturing, and Trade; Graham Dufault, Counsel, Commerce, Manufacturing, and Trade; Melissa Froelich, Counsel, Commerce, Manufacturing, and Trade; Paul Nagle, Chief Counsel, Commerce, Manufacturing, and Trade; Olivia Trusty, Professional Staff, Commerce, Manufacturing, and Trade; Dylan Vorbach, Legislative Clerk, Commerce, Manufacturing, and Trade; Michelle Ash, Minority Chief Counsel, Commerce, Manufacturing, and Trade; Christine Brennan, Minority Press Secretary; Jeff Carroll, Minority Staff Director; Lisa Goldman, Minority Counsel, Commerce, Manufacturing, and Trade; Tiffany Guarascio, Minority Deputy Staff Director and Chief Health Advisor; Caroline Paris-Behr, Minority Policy Analyst; Diana Rudd, Minority Legal Fellow; and Andrea Sowall, Minority Staff Member.

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1 Mr. Burgess. The Subcommittee on Commerce, Manufacturing,
2 and Trade will now come to order. The chair will recognize
3 himself for an opening statement.

4 I want to welcome everyone to the committee this morning.
5 This morning we do continue our oversight of the Consumer Product
6 Safety Commission and its mission to protect consumers against
7 unreasonable risks of injury associated with consumer products.
8 It is a very timely hearing, as we prepare to enter into our budget
9 season.

10 This subcommittee held a hearing earlier this Congress with
11 four of the commissioners present about the status of the agency
12 agenda. Really two key issues emerged that warrant further
13 attention. First, the need for collaboration between the
14 Commission and industry to achieve voluntary safety standards for
15 regulated products. Secondly, there were concerns about the
16 Commission's over-extended rulemaking docket. There were
17 concerns about mission creep and there were concerns about
18 repeated requests for unprecedented user fee authority without
19 the requisite justification. And I did stress at the time and
20 will stress again today that when your mission is safety and your
21 resources are scarce, it is critical that you prioritize your
22 activities where you have clear authority and where you can
23 protect the most people.

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24 I hope we will hear about progress today, particularly on
25 the recreational off-road vehicle front. I hope that we will hear
26 about a commission that wants to use technology to help
27 innovation, rather than impede it. We have done a whole set of
28 hearings on technology disrupting industry. At some point, we
29 need to look at how technology can disrupt Washington and make
30 it work, make Washington work better to encourage innovations and
31 to encourage job creation.

32 The innovation driven by the private sector cannot be
33 replicated in the confines of the government. This is recognized
34 by the preference for voluntary safety standards and the
35 Commission's authorizing statute, the National Technology
36 Transfer and Advancement Act, and even in the Office of Management
37 of the Budget. Their recent circular A-119, where they
38 coordinate and clear things through the Office of Management of
39 the Budget that is currently in the process of being updated.

40 The American National Standards Institute, the Underwriters
41 Laboratory are widely known and respected institutions that have
42 worked with industry within and outside the Commission's
43 jurisdiction to help develop voluntary consensus standards.
44 These standards are technical in nature and are generally set to
45 achieve, as their name implies, performance goals, as opposed to
46 the government mandating product construction.

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47 Turning to the Commission's rulemaking docket and request
48 for unprecedented user fee authority, I am interested in hearing
49 from our witnesses today about how these outstanding issues impact
50 a company's ability to plan for the future and a company's ability
51 to innovate. For example, since our last hearing, there has been
52 no change in the status of some of the most controversial processes
53 in rulemaking. This includes a rulemaking that is still pending
54 to upend the incredibly successful voluntary recall program. The
55 import surveillance rulemaking, commonly known as the 1110 Rule
56 has now been turned into a pilot program with eight participating
57 companies. The pilot's implementation guide was implemented
58 just a few weeks ago to reflect the first feedback received from
59 the Customs and Border Protection Support Network Working Group.
60 The Commission has renewed their request for unprecedented user
61 fee authority which, besides the constitutional question at hand,
62 is premature, given the early stages of the pilot project.

63 I am interested to hear from the panelists what outstanding
64 issues remain with the pilot's development and what benchmarks
65 we should be looking for when the Commission reports on the pilot's
66 progress.

67 Finally, it is incumbent upon this subcommittee to find out
68 whether there has been any progress on reducing third party
69 testing burdens for small businesses in the United States. This

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70 is a bipartisan concern and has been addressed multiple times by
71 Congress since 2011. It is frustrating to be sitting here today
72 years later without this issue being resolved.

73 I think we all share the goal of preventing tragic and
74 unfortunate injuries from consumer products. I certainly look
75 forward to hearing from our witnesses about the status and tenor
76 of their working relationship with the Commission and how these
77 relationships can be leveraged to achieve the common safety goal.
78 Industry certainly must do its part.

79 And now I would like to recognize the ranking member of the
80 subcommittee, Ms. Schakowsky from Illinois, 5 minutes for an
81 opening statement, please.

82 Ms. Schakowsky. I thank the chairman -- we have got some
83 feedback here -- for holding today's hearing on the Consumer
84 Product Safety Commission. I appreciate the opportunity to
85 highlight the successes of the Commission and to learn where even
86 more progress can be made.

87 This hearing is to focus specifically on industry
88 perspectives. And while it is important to hear from business
89 under the CPSC oversight, I believe the focus should always be
90 on the Commission's impact in protecting consumers from harmful
91 products and that is what I plan to spend my time on today.

92 This subcommittee played a major role in the enactment of

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the Consumer Product Safety Improvement Act, which was signed into law by President Bush in 2008. It was the product of broad bipartisan negotiation and it passed the House by a vote of 407 to nothing. The legislation gave CPSC additional authority and resources so it could become the consumer watchdog that Americans deserve. It included a provision requiring mandatory standards and testing for infant and toddler products, such as cribs and highchairs, as well as a requirement for postage paid recall registration cards to be attached to products so that customers can be quickly notified if the products are dangerous and I was proud to author both of those improvements.

The CPSIA also included mandatory toy safety standards, including banning lead and dangerous phthalates in toys which are preventing injuries and saving lives.

The Commission has taken its enhanced authority and support to improve consumer product safety from cribs to toys, to cleaning products and I look forward to hearing from our witnesses about those successes and others.

I also look forward to hearing from our witnesses their ideas for how to improve consumer outreach. In the context of auto safety, we have discussed ways to improve notice to consumers of recalls and how to increase consumer responsiveness to recalls. That same concept is just as important in this context, where

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notice to consumers and consumer response is actually much lower but where failure to act can have a similar deadly consequence.

I will say that I am disappointed that today's hearing does not include a member panel on bills related to CPSC oversight and regulation of guns, which no less than four members have asked for. With an ever worsening gun crisis in this country and a legitimate debate about whether CPSC should have the authority to protect consumers in this area, it seems obvious that we should be exploring these legislative proposals. Unfortunately, requests to testify from Representatives Engle, Honda, Robin Kelly, and Maloney were denied by the majority.

Again, I look forward to hearing from our witnesses about the progress we have seen at the Consumer Product Safety Commission and where the Commission should go from here.

Let me just say with a couple minutes, before I was elected to office, I identified myself as a consumer advocate. And I am sure many of you enjoy or appreciate being able to see dates on food. And in 1970, when I was a very young housewife, we got together, five of us, six of us, I was the sixth, and modestly called ourselves National Consumers United, all six of us. And we went to work cracking the codes that were on every product. You could not tell how old the food was. It was kind of a raucous campaign with lawyers involved from the retailers, et cetera.

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139 And finally, we did win this because it has so much favor among
140 consumers but it also really helped the retailers with their
141 inventory control. Because seeing everybody being able to see
142 the dates, there were no laws passed, but the whole idea
143 mushroomed, snowballed, and now people really rely on those dates.

144 So, I guess my point is this, that we can find ways where
145 consumers and the industry, our interest coincide and we make life
146 better for everyone. That incident as a very young housewife
147 really changed my life, as someone who could get something done.
148 And it has been my mission ever since that we find ways that we
149 can make the marketplace more fair for consumers.

150 And I yield back.

151 Mr. Burgess. The gentlelady yields back. The chair thanks
152 the gentlelady.

153 The chair recognizes the gentlelady from Tennessee for 5
154 minutes for an opening statement, please.

155 Mrs. Blackburn. Thank you, Mr. Chairman. And I want to
156 welcome those of you who are on the panel today. Please know we
157 have a Medicaid hearing going on down on the first floor. So,
158 we are going to be back and forth a little bit today in sharing
159 our time.

160 The chairman mentioned some of the problems with the 1110
161 import system and we are going to want to come back to you on that

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162 issue with some questions. Third party testing burdens, there
163 are some issues that remain with this program.

164 I really would like to just go a little bit to the point.
165 We feel as if we have given you a mandate to reduce these regulatory
166 burdens and testing burdens and to look at the marketplace as a
167 whole and to say how do we achieve our goals with product safety,
168 consumer safety, and how do we do this in an effective and
169 efficient manner, that is going to be fair to the taxpayer. And
170 we are going to look at you, come to you with some questions about
171 how you are relieving that regulatory burden and what you see as
172 being some best steps, next steps as we try to reduce that.

173 With that Mr. Chairman, I am going to yield back my time but
174 say we do want to approach a couple of these specific issues with
175 specific answers. Thank you.

176 Mr. Burgess. The chair thanks the gentlelady. The
177 gentlelady yields back.

178 The chair recognizes the ranking member of the full
179 committee, Mr. Pallone, 5 minutes for an opening statement,
180 please.

181 Mr. Pallone. Thank you, Mr. Chairman.

182 I want to start by noting that we received letters from
183 Representative Engle, a member of the full committee, Mr. Honda,
184 Mr. Maloney, and Ms. Kelly requesting a member panel at this

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185 hearing. And each of these members has introduced legislation
186 that would amend the jurisdiction of the Consumer Product Safety
187 Commission over guns and toy guns. And I think the issues raised
188 by these members certainly is worthy of discussion and I am
189 disappointed that the request was denied by the chairman and by
190 the majority.

191 While the topic of today's hearing was listed as industry
192 perspectives on the CPSC, I am encouraged that the perspective
193 of consumer advocates was added and I look forward to that
194 testimony.

195 In 2008, Congress passed the Consumer Product Safety
196 Improvement Act, CPSIA, and in follow-up legislation 2011 made
197 major improvements to CPSC's operations and to the safety of
198 consumer products. One of the most successful sections of the
199 CPSIA was the Danny Keysar Child Product Safety Notification Act,
200 which was authored by our ranking member Schakowsky. And this
201 portion of the law requires the Commission to develop mandatory
202 safety standards for durable infant or toddler products, such as
203 infant walkers, highchairs and cribs. Final safety standards for
204 14 products have been promulgated and proposed safety standards
205 for six more products have been issued.

206 And that is great progress but there is still more to do.
207 As the Commission moves beyond implementation of the CPSIA, the

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208 Commission need an agile system to deal with emerging hazards.
209 Recently, we have heard numerous reports of hoverboards catching
210 fire or exploding, not to mention all those videos of riders
211 falling off of their hoverboards.

212 There is the ongoing issue of artificial turf fields. For
213 over a year, I have been calling on the CPSC and others to conduct
214 a comprehensive review of these fields and questioning the safety
215 of crumb rubber used on artificial playing turf and playgrounds
216 across the country. That crumb rubber is made from recycled tires
217 that often contain cancer-causing chemicals. It is clear that
218 we need more information about the safety of crumb rubber. But
219 in the meantime, kids play on it every day and so we need to begin
220 this review immediately.

221 Although the CPSC Commissioners are not hear today, I look
222 forward to hearing from our witnesses about how the CPSC can work
223 with industry and consumer safety advocates on these types of
224 emerging hazards. I want to know how the Commission can best
225 address foreseeable risk and be better prepared when unexpected
226 problems occur.

227 We should strive for proactive safety instead of just waiting
228 to react after injuries or deaths occur. We should continue to
229 encourage new and innovative products but they must be safe for
230 consumers.

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231 And the CPSC plays a vital role in protecting lives of all
232 Americans. It is a small agency with a big mission but we must
233 ensure that the CPSC has the support from Congress and the
234 resources it needs to fulfill its mission.

235 I yield back, Mr. Chairman.

236 Mr. Burgess. The gentleman yields back. The chair thanks
237 the gentleman.

238 The chair would note, and I think the members of the
239 subcommittee would agree with me, that we offer our condolences
240 to you and your family on the recent loss of your father.
241 Certainly, our thoughts are with you, Frank.

242 That concludes our opening statements.

243 We want to thank all of our witnesses for being here today
244 and for taking the time to testify before the subcommittee.
245 Today's witnesses will have the opportunity to give opening
246 statements, followed by questions from us. Our panel for today's
247 hearing will include Mr. Erik Pritchard, the Executive Vice
248 President and General Counsel for the Recreational Off-Highway
249 Vehicle Association; Mr. Jonathan Gold, the Vice President for
250 Supply Chain and Customs Policy at the National Retail Federation;
251 Ms. Rachel Weintraub, the Legislative Director and General
252 Counsel for the Consumer Federation of America; and Mr. Mark
253 Fellin, Director of Regulatory and Legislative Affairs at the

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254 Juvenile Products Manufacturing Association.

255 We sincerely appreciate all of you being here today. We
256 thank you for the privilege of your time. We will begin the panel
257 with Mr. Pritchard and you are recognized for 5 minutes for an
258 opening statement, please.

259 STATEMENTS OF ERIK PRITCHARD, EXECUTIVE VICE PRESIDENT AND
260 GENERAL COUNSEL, RECREATIONAL OFF-HIGHWAY VEHICLE ASSOCIATION;
261 JONATHAN GOLD, VICE PRESIDENT, SUPPLY CHAIN AND CUSTOMS POLICY
262 AT THE NATIONAL RETAIL FEDERATION; RACHEL WEINTRAUB, LEGISLATIVE
263 DIRECTOR AND GENERAL COUNSEL, CONSUMER FEDERATION OF AMERICA; AND
264 MARK FELLIN, DIRECTOR OF REGULATORY AND LEGISLATIVE AFFAIRS,
265 JUVENILE PRODUCTS MANUFACTURERS ASSOCIATION.

266

267 STATEMENT OF ERIK PRITCHARD

268 Mr. Pritchard. Good morning, Mr. Chairman, ranking member,
269 and members of the committee. My name is Erik Pritchard.

270 The green light is on. Is that better? Okay, I will start
271 over.

272 Good morning. Mr. Chairman, ranking member, members of the
273 committee, my name is Erik Pritchard. I am the Executive Vice
274 President and General Counsel of the Recreational Off-Highway
275 Vehicle Association, commonly known as ROHVA. ROHVA is a
276 not-for-profit trade association sponsored by Arctic Cat, BRP,

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277 Honda, John Deere, Kawasaki, Polaris, Textron, and Yamaha.

278 ROHVA was formed to promote the safe and responsible use of
279 recreational off-highway vehicles, commonly referred to as ROVs
280 or side-by-sides, I like ROV, manufactured and distributed in
281 North America. ROVs are used by families, emergency personnel,
282 and the U.S. military in a variety of environments ranging from
283 mud to sand, to forest to trials. This is a vibrant high-growth
284 industry and a bright spot in the U.S. manufacturing economy.

285 I last appeared before this subcommittee on May 19, 2015.
286 Then, as now, the topic was the U.S. Consumer Product Safety
287 Commission, CPSC, which is the principle federal regulator of the
288 ROV industry. But much has changed over the last 8 months since
289 that hearing.

290 By way of background, ROHVA is accredited by the American
291 National Standards Institute, ANSI, to develop voluntary
292 standards for the equipment configuration and performance
293 requirements of ROVs. Voluntary does not mean opt-in or opt-out.
294 Voluntary standards become the benchmark against which product
295 design and performance is judged. Really, voluntary means
296 industry and other stakeholders, including the CPSC and
297 consumers, voluntarily develop product standards pursuant to ANSI
298 standards development procedures.

299 I am pleased to report that the ROV industry and the CPSC,

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as well as other stakeholders have worked together to develop an updated voluntary standard for ROVs, effectively mooted the CPSC's Notice of Proposed Rulemaking for ROVs. In this regard, CPSC staff's December 1, 2015 letter to ROHVA reads, "CPSC staff supports the proposed changes to the voluntary standard and believes the aggregate effect of improved vehicle stability, handling, and occupant protection will reduce injuries and deaths associated with ROV rollovers."

As a result of this support, we expect that once the updated voluntary standard is published, likely in a few months, CPSC staff will recommend that the Commission terminate the rulemaking. This positive outcome resulted from the joint efforts of industry and CPSC staff, and through Congress' leadership, including, in particular, the efforts of this subcommittee.

Without belaboring the history, industry discussions with the CPSC had some positive momentum back in September and October of 2014, when representatives of ROHVA and each member company traveled to Rockville and Bethesda, Maryland to explain how close the parties were and that any differences could be overcome through further discussion.

Unfortunately, that momentum stalled on October 29, 2014, when the Commission voted three to two to issue its Notice of

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323 Proposed Rulemaking for ROVs. Nevertheless, the industry and
324 CPSC resumed their discussions with meetings in March, May, July,
325 and October 2015, culminating with ROHVA circulating the updated
326 draft voluntary standard a few months ago.

327 The leadership and efforts of the U.S. Congress were
328 instrumental in helping industry and the CPSC achieve this
329 positive result. Senators and representatives from both parties
330 repeatedly the CPSC to engage in the voluntary standards process,
331 rather than pursue rulemaking. This subcommittee went further
332 and elicited testimony from various stakeholders, including from
333 CPSC Commissioners and the industry, regarding the ROV In-Depth
334 Examination Act, the RIDE Act, which would require an independent
335 examination of CPSC's proposals in supporting data by the National
336 Academy of Sciences, among others.

337 Due to the successful agency-industry collaboration on the
338 updated voluntary standard, however, it now appears that that
339 review required by the RIDE Act will not be necessary. This
340 process was costly and time-consuming for both CPSC and the
341 industry and we appreciate the CPSC staff's diligence in working
342 through the issues with us.

343 It is indisputable that the U.S. Congress has other important
344 and complex business and yet, Congress and this subcommittee took
345 the time to provide the necessary oversight essential to a

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346 properly functioning regulatory system. That is no small thing.

347 On behalf of the ROV industry, thank you for your dedication
348 to helping resolve this important matter.

349 [The prepared statement of Mr. Pritchard follows:]

350

351 *****INSERT 1*****

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352 Mr. Burgess. The chair thanks the gentleman. The

353 gentleman yields back.

354 Mr. Gold, 5 minutes for an opening statement, please.

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STATEMENT OF JONATHAN GOLD

Mr. Gold. Good morning Chairman Burgess, Ranking Member Schakowsky, and distinguished members of the subcommittee. Thank you for the opportunity to testify this morning and provide NRF's views on the activities and developments at the CPSC. I would like to ask that my full statement be included in the record.

NRF is the world's largest retail trade association, representing all segments of the retail industry. We have a proud history of engaging with the CPSC, especially since the enactment of the CPSIA. While we have had some issues with its implementation and interpretation, we have always sought to positively interact with the CPSC with the viewpoint and objective of ensuring that products our members sell are safe for American families.

NRF's members have no interest in selling unsafe or violative products. A vibrant and well-resourced CPSC and a marketplace free of unsafe products is aligned with the interest and desires of retailers and the safety well-being of their consumers.

NRF has, for several years, strongly encouraged the CPSC to create a permanent trade advisory group similar to the Advisory Committee on Commercial Operations to U.S. Customs and Border Protection, the COAC, which routinely advises the CBP on the many complex issues related to both imports and exports of goods.

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378 The CPSC did facilitate the formation of a product safety
379 and working group under the COAC to advise on the proposed product
380 safety certificate e-filing mandate, the Section 1110 Rule. We
381 appreciate Chairman Kaye helping to facilitate this working
382 group, which has led to the creation of the current e-Filing Alpha
383 Pilot. Again, having an official advisory committee in place to
384 tackle these and other complex supply chain-related issues will
385 help the CPSC in the future.

386 Now, the Section 1110 Rule did contain many troubling
387 provisions in addition to the sweeping new mandate, including
388 possibly changing who is required to issue the CPSC certificate
389 and expansion of the data required on the certificates. We hope
390 the pilot will address some of these issues and concerns that we
391 have moving forward.

392 NRF members are also concerned with two of the proposed
393 regulations that may have little benefit to consumer safety but
394 enormous burdens on the regulated industry. These include the
395 proposed Voluntary Recall Rule and the so-called 6(b) Rule. NRF
396 strongly questions these proposals' necessity, let alone the
397 enhancement of product safety. We have placed new mandates and
398 burdens on companies that voluntarily report information to and
399 that offer to voluntarily recall products in conjunction with the
400 CPSC.

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Chairman Kaye has publicly stated that these two proposed rules are not his priorities. We would then urge the Commission to fully withdraw these proposals and initiate formal stakeholder discussions about how such rules can be best served and benefit consumers.

Another related proposal before the Congress is a renewed request by the agency for authority to impose user fees for the agency's Risk Assessment Methodology to screen imports for possible product safety violations and risk. While we strongly support risk-based targeting, we have many questions about how such user fee will be developed, collected, and used.

Mr. Chairman, we believe that programs such as the Retail Reporting Program could continue to provide valuable information to the agency. The program is in limbo right now, as the agency continues to conduct an internal review. We believe a robust retail reporting program will provide benefits to the CPSC, program participants, and most importantly consumers, by alerting the agency to product safety issues at the very earliest stage possible.

As the CPSC moves forward towards regulating in the enormously complex and fast-changing global supply chain, we strongly believe that the agency needs to further collaborate with all stakeholders to ensure that regulations not only meet their

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424 stated goal, but do so in a way that does not overly burden the
425 industry. Regulations must not only work, but they must be
426 implemented in a seamless manner.

427 I will note that there does appear to be a new spirit of
428 bipartisanship among the commissioners. Chairman Kaye, all of
429 the commissioners and senior staff seem to be more willing to
430 listen to the views, the concerns of agency stakeholders. These
431 are very welcome trends and ones which we again hope will
432 materialize into more permanent efforts to engage the public and
433 those most impacted by the Commission.

434 Finally, Mr. Chairman, I would like to briefly raise an issue
435 of concern for retailers; that is, the real and growing trend of
436 the CPSC to look primarily to retailers for recalls and other
437 corrective and punitive actions, rather than other participants
438 in the supply chain that might be better positioned to both
439 identify and respond to product safety issues. Traditionally,
440 the CPSC has looked primarily to product manufacturers to identify
441 and report product safety issues as well as undertake product
442 safety recalls. This makes sense, since the product
443 manufacturers are typically in the best position to identify,
444 understand, and respond to product design, manufacturing, or
445 other problems that may lead to a consumer hazard. That
446 presumptions seems to have been reversed and more and more recalls

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are being sought first and, in many cases, solely of retailers.

Mr. Chairman, years of adjustment immediately following enactment of the CPSIA were difficult and, at times, even chaotic. Things seem to have regularized and NRF and its members recognize and appreciate the recent efforts of this Commission and the dedicated CPSC staff to try to bring additional clarity and stakeholder to the agency's still-changing policies and practices, though much more remains to be done on this front.

The traditional agency model of everything invented here no longer works in a real-time world of global supply chain dynamics. We are dedicated to continue positive engagement with the agency and its leaders to ensure that the safety of American families continues to be our mutual and primary objective.

Thank you again for the opportunity to testify and I look forward to questions. [The prepared statement of Mr. Gold follows:]

*****INSERT 2*****

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465 Mr. Burgess. The chair thanks the gentleman. The
466 chair now recognizes Ms. Weintraub, 5 minutes for your opening
467 statement, please.

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STATEMENT OF RACHEL WEINTRAUB

Ms. Weintraub. Chairman Burgess, Ranking Member Schakowsky, Ranking Member Pallone, and members of the subcommittee, I appreciate the opportunity to provide testimony on CFA's perspectives on the CPSC.

I am Rachel Weintraub, Legislative Director and General Counsel with CFA. CFA is a non-profit association of approximately 280 pro-consumer groups that was founded in 1968 to advance the consumer interest through advocacy, research and education.

The CPSC has been working hard to protect consumers from product hazards. The CPSC has been communicating with businesses about CPSC rules in an unprecedented way, including the recent release of a regulatory robot, which will help businesses determine which product safety rules apply to their products in real time. The Small Business Ombudsman has been speaking to business stakeholder business groups, has provided direct guidance to thousands of callers and has revamped its website to provide clear information.

The implementation of the CPSIA has been a high priority and should continue to be so for the CPSC. The CPSC has promulgated more rules than it ever has in its history and has done so in a relatively short period. The rule are substantively strong and

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491 have had an important and positive impact on consumers. Because
492 of the rules promulgated by the CPSC, over a dozen infant durable
493 products, including cribs, infant walkers, play yards, and
494 strollers must now meet new robust standards. For all of these
495 products, third party testing and certification requirements are
496 required. This work must continue.

497 Another high priority for the CPSC is the consumer incident
498 database, saferproducts.gov, required by CPSIA. Some 27,273
499 reports have been posted to the site and the database is an
500 important and useful tool for consumers, researchers, doctors,
501 coroners, and the CPSC. We urge the CPSC and Congress to use this
502 resource to protect consumers.

503 We urge the CPSC to prioritize these emerging and
504 longstanding issues that they are already working to address.
505 For example, the CPSC is actively investigating at least 48
506 hoverboard fires in 19 states. The CPSC sent out two statements
507 on hoverboards warning consumers of potential risks, announcing
508 investigations into the incidents and providing consumer
509 recommendations. The CPSC announcements have been relied upon
510 by many entities who have sought to protect consumers.
511 Unfortunately, we know that these products remain in consumers'
512 homes, potentially posing risks.

513 Potential safety concerns have been raised about crumb

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514 rubber from tire scraps that are used in playground surfacing and
515 synthetic field surfacing. Health risks posed by these materials
516 could include lead exposure and cancer risks.

517 In 2008, CPSC issued a statement indicating that artificial
518 turf made from crumb rubber was okay to install and okay to play
519 on. But CPSC has since distanced itself from that release,
520 causing consumer uncertainty and concern.

521 CPSC is providing technical assistance to California's
522 review of crumb rubber and is working with other agencies with
523 jurisdictions over this product. CPSC needs an increase in their
524 budget appropriation to ensure that these and other emerging
525 safety issues can be effectively addressed.

526 I now wish to discuss a few long-standing hazards that are
527 priorities for the Consumer Federation and should also be for CPSC
528 and Congress.

529 Window coverings. Due to the documented and persistent
530 hazards that cords on window coverings pose to children, in May
531 of 2013, CFA and others filed a petition requesting that the CPSC
532 promulgate a mandatory standard to make operating cords for window
533 coverings inaccessible. At least 11 children die each year,
534 despite six industry attempts at developing adequate voluntary
535 standards. Deaths and injuries can be eliminated by designs that
536 already exist and are available on the market.

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Flame retardants in consumer products. These can be found in numerous types of consumer products that have been associated with serious health problems. These chemicals migrate out from the household products into air and dust. Children are especially at risk.

The CPSC is considering a petition filed by CFA and others to adopt mandatory standards to protect consumers from health hazards posed by the use of non-polymeric, additive form, organohalogen flame retardants in children's products, furniture, mattresses, and the casings surrounding electronics.

Recreational off-highway vehicles pose hazards to consumers and the CPSC indicates there were 335 deaths and 506 injuries related to ROVs from January 2013 to April 2013. ATVs injured at least 93,700 people in 2014 and killed an estimated 638 people as well. More work needs to be done on these issues.

Recall effectiveness. The vast majority of consumers who own a product never find out that the product they own has been recalled. Much more needs to be done.

I thank you for your consideration.

[The prepared statement of Ms. Weintraub follows:]

*****INSERT 3*****

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559 Mr. Burgess. The chair thanks the gentlelady. The
560 chair recognizes Mr. Fellin, 5 minutes to summarize your opening
561 statement, please.

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STATEMENT OF MARK FELLIN

Mr. Fellin. Thank you, Chairman Burgess and Ranking Member Schakowsky for the opportunity to provide testimony to this committee.

JPMA is a is a national not-for-profit trade association representing 95 percent of the prenatal industry, including the producers, importers, and distributors of a broad range of child care articles that provide protection to infants and assistance to their care givers. Innovating, manufacturing, and providing safe products is a priority for JPMA members.

As a new father to my 5-week-old son, Tucker, I personally understand the importance of ensuring that our children are safe in all environments and that parents and caregivers are educated about the importance of using juvenile products safely.

My testimony today will focus on three areas. First, JPMA's relationship with the CPSC as it relates to Section 104 of the CPSIA. Second, the CPSC staff involvement throughout the ASTM process and, third, industry concerns that the integrity of the ASTM Standard setting process be maintained as it relates to Section 104 rules.

JPMA has been instrumental in the development of many key standards that have advanced public safety. For example, ASTM Subcommittee F15.18 on cribs, toddler beds, and changing tables

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received former Chairman Inez Tenenbaum's inaugural Chairman's Circle of Commendation Award for its work as crucial to the development of CPSC's new mandatory crib standards, the strongest in the world.

JPMA and CPSC staff have worked collaboratively throughout the ASTM process. Relying on each other's expertise, we have been able to enhance safety through the ASTM consensus process by facilitating the creation of effective standards based upon hazard data. Like any relationship, it is not always without complications. Let me be very clear. Our industry appreciates uniform national safety regulations. The ASTM process is the backbone of many advances in product safety. However, this process is based upon consensus agreement only after consideration of data and sound hazard analysis.

Over the years, our members have taken CPSC input into account when developing and revising the ASTM Juvenile Product Standards. We believe in the collaborative nature of the process. However, for its part, CPSC staff must better understand and appreciate the realities of implementing standards for the design and production of actual products.

As this committee knows, the CPSC is a data-driven agency. ASTM participants often rely on CPSC staff to provide summaries of verified incident data and engineering analysis.

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Historically, such data has been provided in accordance with CPSA Section 6 requirements. Unfortunately, most recently, such data has not been shared as required for effective standard setting. We urge the CPSC to provide such data, as available, and believe that the process works best when there is a two-way street.

We agree with the CPSC's recent recognition and strategic plan to address such shortfalls and applaud its desire to improve its data systems and increase databased decisionmaking.

Additionally, our members have significant concerns about the manner in which warnings are currently being discussed through the ASTM process. We remain committed to safety and advancing the standards but believe that arbitrarily changing language and/or format in the NPR, after it has been discussed and balloted on multiple occasions within the ASTM process, does not allow for the best standard to be incorporated as the final rule.

Additionally, staff action has created the perception amongst many participants at ASTM that the CPSC will ultimately change the standard during mandatory rulemaking, regardless of consensus at ASTM.

At the end of last year, participants of ASTM shared in a letter to the chairman this sentiment and urges CPSC to delay implementation of any juvenile product rulemaking specific to product, package, and instruction warning, until a

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consensus-based approach could be reached. That letter has been submitted for the record for your review.

JPMA believes strongly in the importance of effective recall, combined with government cooperation. The CPSC's award-winning voluntary recalls program has saved manufacturers countless hours of negotiations and ensured that recalled products are voluntarily and quickly removed from traditional and virtual store shelves. The proposed changes to the voluntary recalls rule are unnecessary and problematic. Congress has had, on multiple occasions, the opportunity to make changes to the 6(b) process but has not. We believe that the confidentiality safeguards available under CPSA Section 6(b) are vital in maintaining a process that has been in place and working for decades.

While we do not agree with the Commission's decision to keep these projects in the operating plan, we do appreciate the chairman's public commitments that neither of these will be heard for decisional vote.

The CPSC and JPMA share the same goal, to advance safety. We commend the chairman for his willingness to work with industry on issues, such as the electronic filling of certificates at import. We are also encouraged with recent studies commissioned by the CPSC to look for ways to reduce the burdens posed by

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654 excessive third party testing requirements and hope that these
655 efforts will finally result in meaningful relief to all companies,
656 specifically small ones.

657 The CPSC leadership and staff continue to state that there
658 is an open door policy at the agency for all stakeholders. It
659 is paramount that this policy be maintained and respected.

660 We look forward to our continuing engagement with the
661 committee and the CPSC and the ability to walk through an open
662 door.

663 Thank you Chairman Burgess and members of the committee for
664 calling this hearing and inviting JPMA to testify. I look forward
665 to your questions.

666 [The prepared statement of Mr. Fellin follows:]

667

668 *****INSERT 4*****

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669 Mr. Burgess. The chair thanks the gentleman. The
670 chair thanks all of our witnesses today. I certainly thank you
671 for spending your time with us this morning.

672 We will move now into the questions portion of the hearing.
673 I will recognize myself for 5 minutes for questions first.

674 And Mr. Fellin, congratulations on the birth of your
675 5-week-old.

676 Mr. Fellin. Thank you.

677 Mr. Burgess. You look awfully well-rested for someone with
678 a 5-week-old at home.

679 Mr. Fellin. I have a very supportive wife.

680 Mr. Burgess. There you go.

681 Well, your members are pretty heavily engaged in voluntary
682 standards in a unique manner. Can you give us a sense of the
683 overall relationship between your industry and the Commission?
684 Where is the collaboration particularly strong and where are there
685 points of tension?

686 Mr. Fellin. Overall, the relationship between our agency
687 and the CPSC in the ASTM process is extremely strong. We have
688 had multiple occasions where CPSC has referenced the final ASTM
689 rule without changes. So, for the most part, it is a good and
690 positive dialogue.

691 Where there is concern right now amongst industry and our

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692 relationship are really when it comes down to warning labels and
693 the way that discussion is currently occurring. There has been
694 a lot of work, many ad hoc committees that have discussed this
695 and, unfortunately, the resolution just doesn't seem to come to
696 fruition with this issue.

697 Mr. Burgess. Are you hopeful or optimistic that that gulf
698 could be bridged?

699 Mr. Fellin. Unfortunately, based on recent discussions, I
700 feel like we are at an impasse. And the fear is that the CPSC
701 is going to go ahead with rulemaking and incorporating of the ANSI
702 standards without necessarily going through the ASTM process.

703 Well, thank you for sharing that with us. Perhaps that is
704 something where the subcommittee could have some additional
705 interest.

706 Mr. Pritchard, you were here before and I certainly thank
707 you for your remarks this morning. It is rare, as a member of
708 Congress, when we hear that we have done our job and things have
709 worked. So, I appreciate you for sharing that experience with
710 us.

711 But in May when you testified, your industry was right in
712 the middle of updating its voluntary safety standard. It was
713 contentious with the Consumer Product Safety Commission staff.
714 How important was it for your industry that the CPSC staff

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reevaluated their recommendations to the Commission once the voluntary standard was updated?

Mr. Pritchard. So, I think the factor in the middle of that, the reevaluation or the recommendation to the commissioners, I think what they have done is they have evaluated the updated draft standard, which they received late last year, seemingly approve it, based on their letter. We have had good conversations about it and in our view, we are moving forward to finalizing the voluntary standards.

At that time, we think that the staff will recommend that the Commission terminate the rulemaking. But to get from where we were to here, took a lot of steps and a lot of conversations. And frankly, Congress' involvement was crucial. There is just nothing else to say about it.

I think we were in a place where we had our position, they had their position and someone needed to help come in and break the logjam and get the parties talking to each other and listening to each other a little bit better.

And I would just want to add to that point that those conversations have continued. And so I think we are in a much better place than we were 8 months ago, even 6 months ago.

Mr. Burgess. And that is to what you attribute the breaking of the logjam? Because when you were here before, it was pretty

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tense.

Mr. Pritchard. It was tense and it remained that way for a while. I do believe it broke the logjam but I think you can't underestimate the CPSC staff's willingness to still engage with us in those discussion. We did keep talking. They deserve credit for continuing to talk with us and those conversations were in-person, on the telephone, offsite to see the vehicles being tested. So, it was a collective effort but I can't understate the importance of your involvement.

Mr. Burgess. Okay, just as a point of congressional trivia, I am the chairman of the Congressional Motorcycle Caucus. So, I wanted to share that with everyone in full disclosure.

Well, and I will, too, say, the staff at the Consumer Product Safety Commission, it has been a few years since I have been out there and visited with the staff, but I have done that. In fact, we were working on the bill in 2007 and 2008 and the staff is certainly nonpartisan. Certainly, they are dedicated to their job of consumer safety. Some days, or some things, or some areas where they look quite innovative in their ability to actually create the tools that they needed to test a particular product. So, I just want to echo your sentiment on what a good job that the staff does and certainly, they don't get singled out for praise often enough.

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761 Mr. Gold, I just want to address one thing with you and I
762 may provide some follow-up questions for you. In your testimony
763 finally, I would like to briefly raise an issue that has not been
764 discussed with the subcommittee or generally to date, the recalls
765 being visited upon the retailer, as opposed to the manufacturer.

766 And when I sat on this subcommittee many years ago when
767 Chairman Rush was the subcommittee chair, this seemed to be a
768 significant problem that devices -- I am sorry -- products that
769 were going to be recalled were finding their way into the country
770 and then the recall happens. And I remember Chairman Rush
771 expressing some concern that some of these products that were
772 recalled for a valid reason might end up in discount houses in
773 neighborhoods across the country. Is that to which you were
774 referring in that part of your testimony?

775 Mr. Gold. Mr. Chairman, no. Unfortunately, we are seeing
776 instances where just products in general, the CPSC is going to
777 the retailer first to push for recalls. We were seeing some
778 issues, two issues that were mentioned earlier like hoverboards
779 and window coverings, where the CPSC is going through the retailer
780 and trying to make sure that products were pulled off the shelves
781 or a recall is done, without working through the process and
782 working with the manufacturers.

783 It is a longstanding process. We just feel like there is

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784 more emphasis now on going to the retailer because they are the
785 consumer-facing aspect to push that action before going through
786 the process.

787 And as far as the other products we were talking about, this
788 is where kind of the worst-based methodology comes in in risk
789 targeting and the ability to do that to make sure you don't have
790 these volatile products coming into the country from the start.

791 Mr. Burgess. Yes, I do want to follow up with you in writing
792 for the record.

793 Ms. Schakowsky, you are recognized for 5 minutes for
794 questions please.

795 Ms. Schakowsky. Well, hoverboards have come up a number of
796 times. They were one of the most popular holiday gift this year.
797 But unfortunately, we have been hearing more and more reports
798 about hoverboards exploding and catching fire unexpectedly. So
799 far, at least 20 U.S. colleges, several major airlines, and a few
800 cities have banned them. And some retailers have started taking
801 them off the shelves.

802 Just yesterday, ABC News reported that a home fire in
803 Tennessee was caused by a hoverboard that burst into flames. But
804 a consumer who really wants one, can still find one and they are
805 still unregulated.

806 So, Ms. Weintraub, when it becomes apparent that a new

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807 product poses a safety risk, how can we ensure that things move
808 quickly to reduce the number of accidents, such as leveraging
809 rules that already exist for similar products or component parts?

810 Ms. Weintraub. Well, I think what you suggested is exactly
811 right. I mean we need safety standards. And I think for this
812 product, we don't need to start from scratch. And UL, for
813 example, is expert in lithium-ion batteries. There are other
814 standards. They are already moving on a standards process.

815 Hoverboards could fit into motorized scooters with an ASTM
816 and they are also beginning the voluntary standard process.
817 Since they don't need to start from scratch, hopefully, this
818 process will move faster.

819 But even before a product comes on the market, we think it
820 is the responsibility of the manufacturer to do a risk assessment,
821 figure out what hazards could this product pose, what hazards have
822 other similar products posed, and are there similar standards,
823 if not exact standards that couldn't be complied with to prevent
824 that type of hazard.

825 Consumers also, in a case like this, need concrete
826 information. They need to know whether a product that their child
827 is riding, that is sitting in their home could explode, could cause
828 a fire.

829 So, we hope investigations that the CPSC is conducting, and

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830 our understanding is they have been working around the clock, they
831 worked over the holidays, we are very much hoping that this
832 investigation will lead to the information so that consumers can
833 have concrete information so that products that have caused fires
834 will be recalled. And that is what consumers need, clear
835 information.

836 While it is very positive that there are some retailers that
837 aren't selling these products, it is still very consuming and they
838 are still very available for purchase.

839 Ms. Schakowsky. Hoverboards are not exclusively a child's
840 product. So, they are not subject to the same safety standards
841 as toys. Is there a gap that we should be concerned? Should
842 there be more strict standards in place for products like
843 hoverboards which are not made just for kids but are certainly
844 used by kids?

845 Ms. Weintraub. I think there is a gap for any product that
846 is not subject to a voluntary or mandatory standard and we have
847 seen this with infant and juvenile products, as well as with other
848 products like hoverboards that when there is not a standard
849 already in place, there can be risks. And I think this product
850 very much shows what can happen when there is not a standard and
851 when manufacturers are not testing their products to similar types
852 of standards to ensure, in this case, that the batteries and the

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853 charging mechanisms don't overheat and pose a fire risk.

854 Ms. Schakowsky. I wanted to ask you about imports. The
855 chairman of CPSC has said that inexpensive models of hoverboards
856 manufactured in China are of particular concern and that many of
857 the problematic units seem to be coming from there. Customs and
858 Border Protection recently seized almost 3,000 counterfeit
859 hoverboards that they said "posed a potential health risk to U.S.
860 consumers."

861 So, can you talk about some of the challenges associated with
862 ensuring the safety of imported consumer products?

863 Ms. Weintraub. Sure, especially in cases where products are
864 manufactured overseas, imported, and there is not an entity in
865 the U.S., it is very difficult for the CPSC to talk with that
866 entity, to conduct a voluntary recall, to discuss safety issues.
867 So, I think that poses a specific risk to these types of products.
868 I think it is for that reason that retailers who are the first
869 contact that consumers have with these products are being
870 contacted and do have a responsibility. And we certainly think
871 that everyone in the supply chain from the manufacturer to the
872 retailer, to testing labs, the entire supply chain has a
873 responsibility to ensure that products on the market don't pose
874 risks to consumers.

875 And this is also why we are very supportive of CPSC's efforts

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876 at import surveillance because another layer in product safety
877 is to prevent these products from entering the U.S. market and
878 getting into our homes.

879 Ms. Schakowsky. Great. I will yield back. Thank you.
880 Thank you very much.

881 Mr. Burgess. The chair thanks the gentlelady. The
882 gentlelady yields back.

883 The chair now recognizes the gentleman from Kansas, the
884 author of the RIDE Act, 5 minutes for questions, please.

885 Mr. Pompeo. Thank you very much, Mr. Chairman.

886 Mr. Pritchard, what are the lessons learned? How do we
887 repeat the success that we collectively add to your industry, CPSC
888 and their staff, us here on the committee and the Congress? What
889 are the lessons about timing and how we can be constructive to
890 work together to get good outcomes for consumers and for
891 manufacturers a well?

892 Mr. Pritchard. So, I think there a couple steps and I will
893 base it on our experience but I think that they can be applied
894 fairly broadly.

895 One, I think when industry realizes that there is an impasse
896 with the Commission, then industry needs to bring it to your
897 attention and let you know that there is a problem. I think at
898 the Commission, if they are in discussions with industry, they

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899 should keep those discussions going.

900 In my view, voting out the Notice of Proposed Rulemaking was
901 a profound mistake and I will tell you why today and what I said
902 then. Essentially, the Notice of Proposed Rulemaking puts
903 industry on the defensive. And so then, in response, industry
904 submits comments back, which are critical, which puts the
905 Commission on defensive. So, at that point, it is really hard
906 to have a discussion because everybody has basically got their
907 backs up, trying to defend positions, rather than trying to reach
908 the best outcome.

909 So, it is really this. Industry has got a part to play in
910 keeping the discussion going. The Commission has a part to play
911 in keeping the discussion going. And I think then Congress has
912 to be involved early enough to be part of those discussions, to
913 let the parties know that Congress is paying attention and that
914 Congress is expecting a sensible resolution because I am assuming
915 you all don't want to have to deal with legislation every time
916 an impasse comes up, whether it is with this federal regulatory
917 agency or another one.

918 Mr. Pompeo. That is a pretty fair assumption. Thank you
919 for that.

920 Ms. Weintraub, you talked about the Consumer Product Safety
921 database a little bit in your opening comments. You said there

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922 were 27,000. What period was that over?

923 Ms. Weintraub. So, that is from when it --

924 Mr. Pompeo. Is that from inception?

925 Ms. Weintraub. Inception -- conception -- no, not
926 conception. Creation.

927 Mr. Pompeo. From when it began.

928 Ms. Weintraub. When it began. I think it went online in
929 2011 until January 21, 2016.

930 Mr. Pompeo. And tell me what benefits you can tangibly
931 identify that resulted from that.

932 Ms. Weintraub. Sure. Well, as you well know, with 6(b),
933 there was a limited amount of information that the CPSC has been
934 able to communicate naming brands of products.

935 So, before, if a consumer was interested as Mr. Fellin has
936 been, in purchasing a product for a new baby, there is limited
937 information. He is in a different case because he is an expert
938 but there is limited information that you can get from CPSC's
939 website, other than general information about hazards associated
940 with strollers, in particular.

941 So, what this database has created is a resource for
942 consumers. They could see if they are looking for a stroller what
943 consumers' experience has been. They can see if they own a
944 stroller, whether someone else has a similar experience or maybe

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945 it is just specific to their use.

946 So, I think it has really created a much more robust and much
947 more rich resource for consumers, as well as for researchers and
948 others. Something else we have been able to identify is sort of
949 well what are the product categories that are most represented.
950 Are there trends? So, we have looked at his data for that type
951 of stuff.

952 Mr. Pompeo. Do you know what the error rate is then, that
953 is complaints that were made, items listed of those 27 that were
954 just flat out wrong, they had the wrong manufacturer, it was
955 un-useful information or even worse?

956 Ms. Weintraub. I am sorry, do I know the number that had
957 errors?

958 Mr. Pompeo. Yes, that were just flat out wrong.

959 Ms. Weintraub. I do not.

960 Mr. Pompeo. Like if somebody was mad and they wrote down
961 it was Brand X and it turned out they had nothing to do with Brand
962 X.

963 Ms. Weintraub. I do not.

964 Mr. Pompeo. Do you know how many hours were spent for
965 manufacturers responding in the way that they are required to
966 respond by law to items that appear on the CPSC database?

967 Ms. Weintraub. I do not.

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968 Mr. Pompeo. Do you know how much it costs them to do that?

969 Ms. Weintraub. I do not.

970 Mr. Pompeo. So, not tangible benefits that have been
971 identified. That is, we can quantify that and you have no idea
972 of what those costs were.

973 Ms. Weintraub. I do not have knowledge of those costs.

974 Mr. Pompeo. Great, thank you.

975 Mr. Chairman, I yield back.

976 Mr. Burgess. The chair thanks the gentleman. The chair
977 recognizes the ranking member of the full committee, Mr. Pallone,
978 5 minutes for questions, please.

979 Mr. Pallone. Thank you, Mr. Chairman.

980 My questions, initially, are to Ms. Weintraub about the crumb
981 rubber, the crumb rubber issue. Over the last several years,
982 questions have been raised about the safety of artificial turf,
983 which is used in schools, parks, daycare centers, and sports
984 fields throughout the country. An NBC News report in October 2014
985 documented a growing group of young athletes diagnosed with
986 non-Hodgkin's lymphoma who played on artificial turf fields
987 filled with crumb rubber. And the crumb rubber is often made from
988 recycled tires, which contains carcinogens.

989 Following the NBC report, I sent a letter to the Centers for
990 Disease Control asking for an official study to examine risks of

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991 continued exposure to crumb rubber. And in May 2015, during a
992 hearing in front of this committee, CPSC Chairman Kaye agreed with
993 me that more research is needed. And in October 2015, Chairman
994 Upton and I sent a letter to the EPA, once again, expressing
995 concerns on this issue. But I have to say that I am disappointed
996 that still nothing has been done.

997 And clearly, this is a complicated issue. Many agencies are
998 involved. So, Ms. Weintraub, are you aware of any existing
999 industry standards to prevent the use of toxic chemicals in
1000 artificial turf?

1001 Ms. Weintraub. I am not aware of a specific standard for
1002 crumb rubber. We could certainly hope that since it is going into
1003 a children's product that similar standards could be used as
1004 guidance, for instance, in terms of lead and other heavy metals,
1005 but I am not aware of a specific standard.

1006 Mr. Pallone. Is the research sufficient to conclude that
1007 exposure to crumb rubber is safe and that it is okay for kids to
1008 play on it you think?

1009 Ms. Weintraub. No, I do not think the research is sufficient
1010 and we very much support your position and that of the CPSC that
1011 more research is needed and that all the entities, state, federal
1012 need to work together as quickly as possible to research this
1013 issue.

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1014 Mr. Pallone. I think you answered my next question. it was
1015 about CPSC's limited resources to investigate the possible health
1016 effects of prolonged exposure to crumb rubber. And you said that
1017 you do think it would be beneficial for them, CPSC to work with
1018 the other agencies.

1019 Artificial turf and crumb rubber has been in use for more
1020 than a decade. They are using it on playing fields, playgrounds
1021 across the country but there are a lot of serious safety questions
1022 that linger unanswered, while our children and athletes continue
1023 to be exposed. Let me ask you again. What can the CPSC do to
1024 address safety and health concerns with new products, not just
1025 crumb rubber, but with new products before they come to market
1026 so that our children are not the test subjects?

1027 It often seems like the product comes to market and then if
1028 things go wrong, okay, then we take another look at it. Can we
1029 look do things differently in that regard?

1030 Ms. Weintraub. I think we can. I think the responsibility
1031 lies with the manufacturers of the products to ensure that they
1032 meet standards, if standards exist. And then if no specific
1033 standards exist that they use those as guidance to ensure that
1034 they don't pose risks to consumers. We actually think that for
1035 many products, such as infant and toddler products, that product
1036 should not go on the market if there is not a voluntary standard.

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1037 Mr. Pallone. You know I think that the public thinks it is
1038 the opposite. They are shocked when you tell them well, the
1039 product goes on the market and then we see if it is safe. They
1040 assume that it has already been tested and safe before it goes
1041 on the market. But that is not the case. Correct?

1042 Ms. Weintraub. Correct. And that is certainly true. I
1043 mean consumers perceive that if a product is available for sale
1044 that has been tested by some entity for safety. We have tried
1045 to bridge that gap with CPSIA for infant and toddler products but
1046 we still have a long way to go.

1047 Mr. Pallone. Well, let me just ask one more question about
1048 the artificial fields. I am also concerned about the possible
1049 physical injuries that can occur while playing on artificial
1050 fields, such as joint injuries from increased resistance or burns
1051 from overheated turf. Should the CPSC also be investigating
1052 these other possible safety concerns, in your opinion?

1053 Ms. Weintraub. Definitely.

1054 Mr. Pallone. All right. I have a minute left. I wanted
1055 to ask a little about emerging hazards but I know I don't have
1056 much time. Is there a difference in how emerging hazards from
1057 consumer products are handled when they relate to a defect, as
1058 opposed to an unintended use, such as kids biting into laundry
1059 pods? I know when my wife starting using these laundry pods, I

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1060 was wondering what they were. My understanding is that kids will
1061 think they are candy.

1062 So you know the question is, does that response tend to be
1063 faster for one than the other of those two types of things?

1064 Ms. Weintraub. You know I really think, and I worked on the
1065 laundry pod issues as well as many others, and I think one of the
1066 biggest responsibilities of a manufacturer is to think of
1067 foreseeable use, which may include unintended use. But
1068 foreseeable use of how the product is used in the real world must
1069 be thought about, must be assessed, and the product must be
1070 designed for that foreseeable use.

1071 Mr. Pallone. Okay, thanks a lot.

1072 Mr. Burgess. The gentleman yields back. The chair thanks
1073 the gentleman.

1074 The chair recognizes the gentleman from Kentucky, Mr.
1075 Guthrie, 5 minutes for questions, please.

1076 Mr. Guthrie. Thank you, Mr. Chairman. Thank you for
1077 conducting this meeting and I thank all the witnesses for being
1078 here.

1079 My first question is for Mr. Pritchard. Based on your recent
1080 experience of vetting the ROV voluntary standard, should we be
1081 concerned about how the Commission is using or not using
1082 scientific data to support these policy positions?

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1083 Mr. Pritchard. Our experience was that the data did not
1084 support the Commission's claims.

1085 I want to go back in time. We received the Notice of Proposed
1086 Rulemaking in a briefing package and it had a lot of claims in
1087 it with references to data and incident reports that were
1088 separate. So, we requested all of those records and all that data
1089 and couldn't get it. We couldn't get it and we ultimately filed
1090 a FOIA appeal, which was granted in its entirety some months later.

1091 When we dug into the data, the data did not match, in our
1092 view, the claims and we explained that in our comments back to
1093 the Commission in response to the Notice of Proposed Rulemaking.
1094 I don't know if that means that there is a profound issue or a
1095 fundamental issue. I can just tell you that we had an issue with
1096 the data.

1097 Mr. Guthrie. Mr. Gold or Mr. Fellin, do you have any
1098 comments on that type of -- that is fine. I have got another
1099 question. You can go ahead.

1100 Mr. Fellin. We have had similar concerns along the ASTM
1101 process where we have requested data from the agency, both
1102 verbally at ASTM meeting and then also in writing to the various
1103 CPSC staff members on it and have been denied that information.

1104 Mr. Guthrie. I have a question for you, Mr. Fellin. In May
1105 2012, the GAO published a report recommending that the Commission

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1106 staff participate more actively in the voluntary standards
1107 process. Given your experience with the agency, is the delay
1108 between the publication data of the GAO report, May of 2012, and
1109 the effective date of the new rules, March 3rd of this year,
1110 typical?

1111 Mr. Fellin. I think it all depends on staff resources and
1112 the priorities of a given commission.

1113 Mr. Guthrie. Well, given the importance of voluntary
1114 standards to the product safety and the Commission's mission,
1115 should this rule update have been priority over other of their
1116 undertakings?

1117 Mr. Fellin. From JPMA's perspective, CPSC already plays a
1118 vital role in the 104 rulemakings, which I think are a unique
1119 standard-setting process. We raised concerns with the proposed
1120 rule mainly that agency staff not have undue influence over the
1121 process and that staff not dictate Commission decisions. But I
1122 can't speak as to whether or not it should have been a higher
1123 priority for other industries.

1124 Mr. Guthrie. Okay, thank you very much.

1125 And Mr. Gold, you mentioned the Commission's open meetings
1126 policy in your testimony. Transparency is what we all want to
1127 see happen. It is a government good. It is what we need to have
1128 in place but just a question about it.

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1129 What impact does this policy have on the Commission's ability
1130 to communicate with industry and are there circumstances where
1131 Commission resources have benefitted from feedback from the
1132 industry prior to releasing the proposed rule?

1133 Mr. Gold. Thank you, Congressman. So, I think the alpha
1134 pilot is probably the prime example of where there was an issue
1135 because, as this working group was created under the COAC, which
1136 is a Customs advisory committee, we had plenty of discussions with
1137 Customs but yet, CPSC was not in the room for these discussions,
1138 our technical discussions on how supply chains work, how data is
1139 transferred, who owns it at what point in time. So, as this is
1140 a CPSC rulemaking, they are going to be relying on CBP to collect
1141 the data, not having CPSC in the room to understand some of these
1142 difficulties was a little challenging because we would have to
1143 CBP to provide us information from CPSC with questions and
1144 challenges, and that we would have the discussion, and we would
1145 have to rely back on CBP to go back to CPSC to do the
1146 interpretations.

1147 So, we fully understand transparency and the need for that
1148 but there are certain times when you have to have these technical
1149 meetings where you have companies who are talking about very
1150 business confidential information as far as how their supply
1151 chains work and what data they have and when they have it. Those

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1152 kinds of meetings get very technical and we think should be closed.
1153 And this is where an advisory committee, whether it is a FACA or
1154 some other committee could help with this process moving forward.

1155 It would have been nice, had we had the opportunity to have
1156 these working group discussions or stakeholder meetings before
1157 the 1110 rule was put out to talk about some of this so we didn't
1158 have a rule put out that everybody was opposed to and listed a
1159 whole number of concerns. Had we had those discussions in advance
1160 and talked about the complexities, and really had discussion about
1161 what is it that CPSC wants, what it is that industry can provide,
1162 it would have been a better position to be in than where we are
1163 now. We are glad we have the pilot in place to really work through
1164 some of these technical issues and try and figure out how this
1165 is best going to work.

1166 Again, we are very supportive of risk-based targeting. We
1167 think this will help but because of the complexities, we can't
1168 just put a rule out and expect everyone to do it. This needs to
1169 be worked through because of the technical aspect of it.

1170 Mr. Guthrie. Okay, thank you. My time has expired. I
1171 yield back.

1172 Mr. Burgess. The chair thanks the gentleman. The
1173 gentleman yields back.

1174 The chair recognizes the gentlelady from New York, Ms.

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1175 Clarke, 5 minutes for questions, please.

1176 Ms. Clarke. I thank you, Chairman Burgess for this very
1177 important hearing. And to all of our witnesses today, thank you
1178 for lending your expertise to the subject matter at hand.

1179 I want to raise the issue of recall effectiveness. We would
1180 all like to avoid problems before they happen but sometimes
1181 unexpected harms arise. In these cases, the CPSC works with the
1182 manufacturer of a defective product to conduct a recall but notice
1183 to consumers is difficult and recall response rates tend to be
1184 very low.

1185 So, Ms. Weintraub, do you have any ideas on how the CPSC or
1186 industry can be more proactive in reaching consumers when there
1187 is a recall on a product?

1188 Ms. Weintraub. Yes, I do. Thank you very much for the
1189 question.

1190 Both Kids in Danger and the chairman have said that those
1191 involved in selling products should use the same amount of energy
1192 and resources that they do to sell a product to get a product back
1193 that has been recalled. And we are very far from that goal.

1194 I think there are many things that both the CPSC and those
1195 in the supply chain can do, using innovative technology, using
1196 social media, using information that retailers and others have
1197 about consumers who bought specific products. I think one of the

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1198 issues is targeting the right people, ensuring that the people
1199 who have the product, who bought the product know about a recall.

1200 I also think it is important for the information to be clear.
1201 These things should be called recalls. They should be available
1202 on the websites. They should be communicated clearly with a very
1203 clear action for what the consumer should do, clearly articulating
1204 the risk. And I think this is a subject that many have been
1205 working on for a long time but it needs a lot more attention.

1206 Ms. Clarke. Thank you.

1207 Mr. Fellin, the Danny Keysar Child Product Safety
1208 Notification Act requires manufacturers of durable infant
1209 products to provide consumers with a postage-paid registration
1210 card with each product to improve the effectiveness and response
1211 rate of recalls. What are your member companies doing to increase
1212 the rate of return on those registration cards?

1213 Mr. Fellin. Recall effectiveness is something that I think
1214 our industry, as well as the consumer groups and governmental have
1215 the same priority and that is to get the message out as quickly
1216 as possible. We were proud last year to actually work with CFA
1217 and the consumer groups to develop an "It's Not Hard! Fill Out
1218 the Card!" campaign. And the whole process of that was to educate
1219 consumers that it takes 2 minutes. It is postage paid for, fill
1220 out the card, get it back to the manufacturer.

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1221 While manufacturers continue to try and figure out
1222 innovative ways to try and reach the consumer, the last thing we
1223 want as an industry is to have a product that has been recalled
1224 reach the hands of another consumer and we look to continue to
1225 work with the agency. And I have asked the agency, in meetings
1226 with them, to conduct a workshop that would bring a lot of these
1227 issues to the foreground and discuss recall effectiveness because
1228 it is a priority for industry as well.

1229 Ms. Clarke. You just mentioned that you are looking into
1230 alternative methods as well. Can you drill down on that a little
1231 bit?

1232 Mr. Fellin. Of course. A lot of our manufacturers, based
1233 on the fact that a lot of parents nowadays are younger and much
1234 more tech savvy have also published registration information on
1235 their web pages. There is also technology out there that has
1236 begun to allow to take pictures of various information will allow
1237 the products to be registered that way. So, we are constantly
1238 evaluating and looking at ways in which to improve that aspect
1239 of products.

1240 Ms. Clarke. Very well. Thank you.

1241 Mr. Gold, often, manufacturers do not have a relationship
1242 with consumers but retailers do. What are you member companies
1243 doing to help get notice to consumers when there is a recall?

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1244 Mr. Gold. You know I think they are doing as much as they
1245 possibly can. I think, again, as Mr. Fellin said, having this
1246 workshop to talk about recall effectiveness and how messages are
1247 put out I think is very important. It is not as easy for a retailer
1248 to just throw up a recall notice on their website, there are
1249 challenges there. And I think we need to talk through that and
1250 figure what is the best way --

1251 Ms. Clarke. You said they are doing the best that they can.
1252 Is there something specific that they are doing?

1253 Mr. Gold. I don't have the specifics --

1254 Ms. Clarke. Okay.

1255 Mr. Gold. -- how retailers are doing it. It really
1256 depends on the retailer, the relationship, how they are getting
1257 information out the customers or the users.

1258 Ms. Clarke. Any examples?

1259 Mr. Gold. I don't have any.

1260 Ms. Clarke. Okay.

1261 Mr. Gold. I can provide you some later on. I just can't
1262 provide you any right now.

1263 Ms. Clarke. Okay, sure. Thank you.

1264 Mr. Chairman, I yield back.

1265 Mr. Burgess. The chair thanks the gentlelady.

1266 The chair recognizes the gentlelady from Indiana, Mrs.

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1267 Brooks, 5 minutes for questions, please.

1268 Mrs. Brooks. Thank you, Mr. Chairman. I want to thank the
1269 witnesses for their insight.

1270 Indiana is actually the home of a very, very large presence
1271 of toy companies and juvenile product manufacturers across our
1272 state. And Mr. Fellin, you probably know well that Dorel is the
1273 largest juvenile product manufacturer in the nation. It is based
1274 outside of my district down in Columbus, Indiana, but 950 people
1275 work around the clock many shifts to try to ensure that they are
1276 producing incredibly safe, the safest products possible.

1277 I have a company called IMMI based in Westfield that works
1278 closely with Dorel to try to ensure that they are designing
1279 products that are safest on the road. And then in my district
1280 that I recently visited a toy manufacturer -- I am sorry -- a puzzle
1281 manufacturer called Package Right, a puzzle facility in Tipton,
1282 and I am very pleased to learn that they actually brought
1283 production back from China in order to ensure safety and to
1284 reinvest in our economy.

1285 Back in May, I asked the chairman and Mr. Fellin, I will start
1286 with you, I asked the chairman of the CPSC about what actions they
1287 have taken to provide relief to companies for some of the third
1288 party testing requirements and he mentioned the Office of the
1289 Ombudsman, that it is providing support and assistance to find

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1290 out whether or not they need certain testing. And I am curious
1291 whether or not from your companies that you work with, how have
1292 they found the Ombudsman Office either helpful or is it sufficient
1293 in reducing the costs and burdens to your member companies?

1294 Mr. Fellin. I don't know if it has necessarily helped in
1295 reducing the cost. But in terms of helping navigate a very
1296 complex regulatory framework, the Office of the Ombudsman has been
1297 extremely helpful in that capacity.

1298 Mrs. Brooks. Are you still dealing with a lot of the smaller
1299 manufacturers with respect to their third party testing burdens
1300 and can you share a bit more about that?

1301 Mr. Fellin. Absolutely and it doesn't just extend to the
1302 small manufacturers. Our large manufacturers feel the testing
1303 burden just the same.

1304 We are certainly encouraged by the agency's desire to
1305 promulgate studies on ways to reduce burden and our industry has
1306 been very active and testified at the CPSC hearings with regards
1307 to burden reduction.

1308 Since Congress allocated funds specific to burden reduction,
1309 we have yet to see any meaningful reduction in that capacity but
1310 we certainly would welcome it.

1311 Mrs. Brooks. And when did that happen that Congress
1312 allocated?

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1313 Mr. Fellin. I believe in last year's Appropriations Bill,
1314 they allocated \$1 million.

1315 Mrs. Brooks. And you have seen nothing done with that \$1
1316 million?

1317 Mr. Fellin. To my knowledge, we have not seen anything that
1318 would provide meaning for you.

1319 Mrs. Brooks. Okay. I am curious whether or not any of the
1320 other panelists are aware as to whether or not CPSC has used the
1321 appropriated dollars. Is anyone aware of this issue?

1322 Mr. Gold. I am aware of the issue but I am not aware, again,
1323 as Mr. Fellin, that the work continues. I think folks are waiting
1324 to continue to see CPSC put out more guidance and more ways for
1325 companies to reduce testing burdens. I know there was additional
1326 monies put in the budget but we are, again, waiting to see the
1327 effectiveness of this.

1328 Mrs. Brooks. Mr. Gold and Mr. Fellin, you both mentioned
1329 in your testimony a lack of transparency in the Commission's
1330 justification for a number of the activities, including proposals
1331 to amend the voluntary standards processes and proposed
1332 rulemakings. How important do you think it is for the Commission
1333 to justify its activities and prioritization of activities? And
1334 it would seem that it would help this committee ensure that the
1335 committee's actions are directly tied to its critical safety

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1336 mission in a measurable way. And so how important is it that you
1337 think, and I guess all of you, to justify its activities and
1338 prioritization of its activities, when we don't know how they are
1339 using even the funds that have already been appropriated?

1340 Mr. Fellin. The CPSC routinely says that they are a
1341 data-driven agency and they continue to request from our members
1342 data when making any decision. And I think, in any relationship,
1343 providing data and a rationale for why you are doing things just
1344 provides good dialogue. And I would hope that in any decision
1345 that they were making, that they provided the proper rationale
1346 for doing so.

1347 Mrs. Brooks. Mr. Gold?

1348 Mr. Gold. I would agree. I think two-way communication is
1349 critical, especially as you are looking at some of these issues
1350 to get a full understanding of what the issue is and what is a
1351 reasonable response and how do we move forward is critically
1352 important.

1353 We see this with other agencies as well. We think it is
1354 important to have the bidirectional conversation and
1355 bidirectional education, where the complexities in the supply
1356 chain are understood and realized. So, if there are issues with
1357 recall, let's have a workshop and a dialogue so that you get the
1358 best and brightest minds in a room and have a conversation on how

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1359 to make this work better.

1360 If there are issues of recall is not happening because of
1361 some companies who don't do it, don't punish those who are always
1362 doing this the right way. Let's focus on how do we go after those
1363 bad actors.

1364 So, I think that conversation is extremely important and the
1365 justification is just as important.

1366 Mrs. Brooks. Thank you. And just from my conversations,
1367 Mr. Chairman, child safety is number one priority for all these
1368 companies. Thank you. I yield back.

1369 Mr. Burgess. The chair thanks the gentlelady.

1370 The chair recognizes the gentleman from Vermont, Mr. Welch.

1371 Mr. Welch. No, I yield, Mr. Chairman. I don't have
1372 questions.

1373 Mr. Burgess. Very well. The chair then recognizes the vice
1374 chair of the subcommittee, Mr. Lance from New Jersey, 5 minutes
1375 for questions.

1376 Mr. Lance. Thank you, Mr. Chairman.

1377 Mr. Gold, at a recent public Commission meeting, there was
1378 a discussion between the Commissioner Buerkle, whom we know, and
1379 Import Surveillance staff about the new pilot project to improve
1380 targeting of potentially unsafe products at the border. During
1381 the discussion and the video is available on the Commission's

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1382 website, the staff was asked about its justification for adding
1383 the name of the testing lab to the list of mandatory disclosures
1384 for the pilot.

1385 The staff said that it had no quantitative information to
1386 support the proposal. Is it concerning that the Commission is
1387 putting together a pilot program without data to support its work
1388 and is there a risk that this undermines the willingness of
1389 companies to participate in the project?

1390 Mr. Gold. Yes, but again, our hope is that with the pilot
1391 project we can actually identify what are the data elements that
1392 are needed to help enhance risk management.

1393 Part of the concern is that there is always a request for
1394 more data but more data isn't always necessary. From our
1395 perspective, we would have had a better conversation from the
1396 outset with CPSC asking what data do you think you need, what are
1397 you currently getting, and how is that helping risk assessment,
1398 as opposed to just putting out a notice saying here is what we
1399 think we need but not fully understanding the process by which
1400 all that information is acquired and what benefit that might
1401 actually accrue to the agency.

1402 So, again, coming back to having an advisory committee to
1403 fully dig into these issues before a notification or regulation
1404 is put out, we think is extremely important. Again, especially

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1405 if there is no justification on the front end for why they need
1406 it, then we have to question well, why are you proposing it.

1407 So, again, having that conversation in advance to get a full
1408 understanding of what the concern is, how can we better address
1409 it and going into the conversation about what data is available,
1410 who owns it at what point in time, how readily available is it,
1411 how can we can get it to the Commission, we think are all questions
1412 that should have been done in advance of the NPRM coming out.

1413 Hopefully now, with a pilot project in place, a lot of these
1414 questions can be addressed.

1415 Mr. Lance. Thank you. Is there anyone else on the panel
1416 who would like to comment?

1417 Mr. Gold, how important is the voluntary recall process to
1418 retailers? How would the changes proposed by the Commission to
1419 the voluntary recall process have an impact on retailer's ability
1420 to get potentially harmful products off of their shelves?

1421 Mr. Gold. It is extremely important and I think, as was
1422 noted earlier in the discussion today, it is an award-winning
1423 program. The Commission, themselves, have noted that it is
1424 extremely important. I think there are concerns that any of these
1425 changes that have been proposed might stymie some of the
1426 information that might come to the Commission. Right now, there
1427 is times where there is not enough clarity on whether or not a

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1428 report needs to be made.

1429 So right now, retailers, they have guidance from the
1430 Commission when in doubt, report. If they have questions going
1431 forward with some of the new requirements, they not be so ready
1432 to report if they really don't have true knowledge of the issue.

1433 So, I think continuing with the program that they have in
1434 place, if there are improvements that can be made, again, let's
1435 sit down, have a conversation and figure out what changes need
1436 to be made or adjusted to handle some of the issues.

1437 Mr. Lance. Thank you. And again, Mr. Gold, do your members
1438 have concerns with the user fee as proposed by the CPSC in the
1439 budget request of last year and this year? And is there a scenario
1440 that your members would support such a user fee?

1441 Mr. Gold. We definitely have concerns not knowing exactly
1442 how user fee is going to be used. There are still issues with
1443 the RAM, the Risk Assessment Methodology which is continuing to
1444 be built.

1445 We have, in the past had issues with other agencies
1446 collecting user fees intended for one purpose, they get siphoned
1447 off for something else.

1448 Mr. Lance. No, that never happens. No.

1449 Mr. Gold. So, that continues to be a concern. Again, if
1450 we can have full visibility into the system, how it is going to

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1451 work, and have a conversation about it before just instituting
1452 a user fee, there might be some willingness. But again, not
1453 knowing how it is going to work, there are definitely concerns.

1454 Mr. Lance. Thank you. Is there anyone else on the panel
1455 who would like to comment?

1456 Seeing none, then, Mr. Chairman, I yield back 45 seconds.

1457 Mr. Burgess. The gentleman yields back and the chair thanks
1458 the gentleman.

1459 Let me just ask if there is anyone on the subcommittee who
1460 would seek additional time with our witnesses this morning.

1461 Seeing no further members wishing to ask questions for our
1462 panel, I would like to thank, again, our witnesses for being here
1463 today.

1464 Before we conclude, I would like to submit the following
1465 documents for the record by unanimous consent. A letter to the
1466 subcommittee from the American Home Furnishings Alliance, a
1467 statement from the Retail Industry Leaders Association.

1468 [The letter from of the American Home Furnishings Alliance
1469 follows:]

1470

1471 *****INSERT 5*****

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1472 [The prepared statement of the Retail Industry Leaders

1473 Association follows:]

1474

1475 *****INSERT 6*****

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1476 Mr. Burgess. Pursuant to committee rules, I remind members
1477 they have 10 business days to submit additional questions for the
1478 record and I ask the witnesses to submit their responses within
1479 10 business days upon the receipt of those questions.

1480 Without objection, then the subcommittee is adjourned.

1481 [Whereupon, at 11:37 a.m., the subcommittee was adjourned.]